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HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition (C) No. 5247 of 2007

Petitioners

1) Ravishankar Prasad Dewangan, S/o. Shri J.P. Dewangan, aged about 28 years, student, MBBS-Internship course, presently residing at Chhattisgarh Institute of Medical Science, Boys Hostel, Room No. D-6, Intern Hostel, Bilaspur (CG) permanent resident of Gandhi Nagar, near Gandhi Chowk, Ambikapur, District Surguja (CG).

2) Rajendra Mumar Singh, S/o. Late Shri Balmukund Singh, aged about 25 years, student, MBBS-Internship Course, presently residing at Chhattisgarh Institute of Medical Science, Boys Hostel, Room No. D-7, Intern Hostel, Bilaspur (CG), permanent resident of Pamgarh Sasaha, District Janjgir Champa (CG).

3) Rakesh Pradahan, S/o. Shri M.R. Pradhan, aged about 26 years, student, MBBS-Internship Course, presently residing at Chhattisgarh Institute of Medical Science, Boys Hostel, Room No.B-4, Intern Hostel, Bilaspur (CG), permanent resident of Rawandhata Pithora, District Mahasamund (CG).

4) Satish Kumar Khalkho, S/o. Shri Sadomani Khalkho, aged about 26 years, student, MBBS-Internship Course, presently residing at Chhattisgarh Institute of Medical Science, Boys Hostel, Room No. D-8, Intern Hostel, Bilaspur (CG), permanent resident of Village Dingapur, I.T.I., Rampur, Post Office Chhattisgarh Electricity Board (East) Korba, District Korba (CG).

5) Miss. Sushma Biswas, D/o. Shri Dr. S.C. Biswas, aged about 26 years, student, MBBS-Internship Course, presently residing at Chhattisgarh Institute of Medical Science, Girls

Hostel, Block No.3, Room No.C-11, Intern Hostel, Bilaspur (CG), permanent resident of Mangli Bazar, Pendra Road, District Bilaspur (CG).

6) Rakesh Kumar Singh, S/o. Shri Ratan Singh Kanwar, aged about 26 years, student, MBBS-Internship course, presently residing at Chhattisgarh Institute of Medical Science, Boys Hostel, Room No. D-1, Intern Hostel, Bilaspur (CG), permanent resident of Jamnipali Village, near Mohan Talkies, NTPC Korba, District Korba (CG).

7) Mrityunjay Sarkar, S/o. Shri J.P. Sarkar, aged about 27 years, student, MBBS-Internship Course, presently residing at Chhattisgarh Institute of Medical Science, Boys Hostel, Room No. D-6, Intern Hostel, Bilaspur (CG), permanent resident of Shivaji Marg, Tikrapara, Bilaspur District Bilaspur (CG).

8) Manglesh Paraste, D/o. Shri M.S. Paraste, aged about 24 years, student, MBBS – Internship Course, presently residing at Chhattisgarh Institute of Medical Science, Girls Hostel, Intern Hostel, Bilaspur (CG), permanent resident of Plot No.36, infront of Forest Barier, Ushalpur, Bilaspur, District Bilaspur (CG).

9) Satya Prakash Kosariya, S/o. Shri Laxman Lal Kosariya, aged about 26 years, student MBBS-Internship Course, presently residing at Chhattisgarh Institute of Medical Science, Boys Hostel, Room No.D-1, Intern Hostel, Bilaspur (CG), permanent resident of Plot No.36, Infront of Forest Barier Ushalpur, Bilaspur, District Bilaspur (CG).

10) Hanshvarsdhan Mehar, S/o. Shri Jagdish Mehar, aged about 25 years, student, MBBS-Internship Course, presently residing at Shanti Nagar, Narmada Nagar, Bilaspur (CG), permanent resident of Naya Ganj, Kostapara, Raigarh (CG).

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Versus

Respondents

1 The State of Chhattisgarh, through the Secretary Higher Education, Government of Chhattisgarh, D.K.S. Building, Raipur (CG).

2 The Registrar, Guru Ghasidas University, Bilaspur, Tahsil and District Bilaspur (CG).

3 The Dean, Guru Ghasidas University, Bilaspur, Tahsil and District Bilaspur (CG).

4 The Dean, Chhattisgarh, Institute of Medical Science, Bilaspur, Tahsil and District Bilaspur (CG).

(Writ Petition under Article 226 of the Constitution of India.)

SB: Hon'ble Mr. Satish K. Agnihotri, J.

Present:
Smt. Renu Kochar, counsel for the petitioners.
Shri S.K. Mishra, Panel Lawyer for the respondent No.1/State
Shri Ashish Shrivaastava, counsel for the respondents No. 2 to 4.

ORDER
(Passed on 15th October, 2007)

By this petition, the petitioners seek a writ in the nature of mandamus commanding the respondent No.2-University to conduct the examinations as per rule in the month of September, 2007 or as early as possible. Secondly, the respondents No. 2 to 4 may be directed to give suitable compensation to the petitioners due to in-action on the part of the respondents leading to loss of one and half years.

2) The indisputable facts, in nutshell, as stated by the petitioners, are that the petitioners were admitted to the M.B.B.S. Course in the academic session 2001 – 2002. The petitioners passed M.B.B.S., (First

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Professional) in December, 2002, M.B.B.S., (Second Professional) in March – April, 2004 and M.B.B.S Final (Part I) in the month of August, 2005. The petitioners appeared in M.B.B.S., (Final) (Part II) examination held in June – July, 2006. The petitioner No.1 failed in General Medicine and General Surgery and appeared in supplementary examination held in November – December, 2006 wherein he cleared one subject i.e., General Surgery, but could not pass General Medicine. The petitioner No.2 also appeared in the supplementary examination held in November – December, 2006 and he could not pass the examination held in June July, 2006, as he passed one subject, but was declared failed in second subject. The petitioner No.3 did not pass even in the supplementary examination held in November – December, 2006. The petitioner No.4 also appeared in the supplementary examination held in November – December, 2006, but failed in the supplementary examination. The petitioners No. 5 to 9 are similarly situated.

3) The grievances of the petitioners are that the respondent No.2-University should conduct the examination immediately for them exclusively within a period of six months, so that they can pass MBBS Final (Part II) examination, at the earliest. The respondent No.2 - University informed the petitioners that since they have failed in the main examination as well as in the supplementary examination, they would be permitted to appear in the examination along with junior batch when the examination for the junior batch in M.B.B.S., (Final) (Part II) takes place, that may be in the month of February, 2008. Being aggrieved, the petitioners have filed this writ petition relying on Clause 7(7) of the Medical Council of India Regulations on Graduate Medical

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Education, 1997 (for short, "MCI Regulations 1997") which reads as under:

> "7(7) Supplementary examination may be conducted within 6 months so that the students who pass can join the main batch and the failed students will have to appear in the subsequent year"

4) According to the learned counsel appearing for the petitioners, subsequent year means calendar year which starts from January and closes in December. Learned counsel appearing for the petitioners would submit that since the petitioners appeared in the supplementary examination held in November – December, 2006, the respondents No.2 to 4 – authorities ought to have conducted the separate examination for the petitioners in the year 2007 expeditiously as per the provisions of MCI Regulations, 1997.

5) Shri Ashish Shrivastava, learned counsel appearing for the respondents No. 2 to 4-University, per contra, would submit that subsequent year does not mean the calendar year. It means the academic year. The petitioners have failed in the main examination as well as in the supplementary examination. Thus, the petitioners have to appear in the main examination with the immediate junior batch which is to take place in February 2008. The interpretation made by the petitioners would create chaos in the academic session and the system of holding examination of a group of failed students separately, after supplementary examination would lead to dis-array and the academic session's circle would go out of the track.

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6) Having heard learned counsel for the parties and perused the pleadings and documents appended thereto, it is evident that there is merit in the contention of learned counsel appearing for the respondents No. 2 to 4/University. Subsequent year does not mean the calendar year, but certainly the academic year. If the course is for one and half years, the logic of subsequent calendar year would lead to absurdity.

7) I do not find any error in the decision of the University/authorities to permit the petitioners to appear in the main examination on the concerned subjects where they have failed along with immediate junior batch students. The University cannot hold examination in every six months to facilitate those candidates, who have failed in the main examination as well as in the supplementary examination. They have to appear with the next batch students in the examination.

8) In view of the foregoing, there is no justification to upset the decision of the University/authorities and no interference is warranted in this petition. This petition has no merit.

9) Accordingly the writ petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Raju